

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

Turn-Key, Inc.¹

Employer,

and

Case 27-RC-8155

Sheet Metal Workers International
Association, Local 213,

Petitioner.

REGIONAL DIRECTOR'S DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

¹ The name of the Employer appears as amended at the hearing. The petition names the employer as Northern Mechanical. The record shows that in the past, Northern Mechanical was a corporation through which the Employer performed work. It consisted of a mechanical group comprised of registered plumbers. Sometime before the hearing, the Employer abandoned its use of Northern Mechanical and no longer performs any work through Northern Mechanical. All of the Employer's work is now performed directly by the Employer, and it is performed by employees employed directly by the Employer herein. While the Employer still utilizes equipment, which bears the name of Northern Mechanical, this equipment is operated by employees of the Employer. Northern Mechanical has no employees and performs no work on jobs performed by the Employer.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The labor organization involved claims to represent certain employees of the Employer.
4. Based upon the record herein, no question affecting commerce exists concerning the representation of the petitioned-for employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons.

STATEMENT OF THE CASE

By this petition, as amended at the hearing, the Petitioner seeks to represent a unit of all journeymen and apprentice sheet metal workers, and HVAC service technicians, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.³ The Employer contends that the requested unit is not appropriate and that the only appropriate unit is one consisting of all field employees employed by the Employer and assigned

² The Employer is an Idaho corporation engaged in the construction industry. It maintains an office and principal place of business in Ontario, Oregon and a branch office in Emmett, Idaho. In the course and conduct of its business operations, the Employer purchases and receives goods and materials at its Idaho facility valued in excess of \$50,000 directly from points and places outside the State of Idaho.

³ At the hearing, the Petitioner refined its requested unit description by defining a journeyman sheet metal worker as an employee with a minimum of 8,000 hours worked in the sheet metal craft. In addition, it defined an apprentice sheet metal worker as a sheet metal employee registered with the United States Department of Labor Bureau of Apprenticeship and Training. With only several exceptions, the record fails to identify which of the Employer's employees meet these definitions and, therefore, which employees would be included in the requested unit. At any rate, I find the Petitioner's definitions of journeyman and apprentice sheet metal worker to be artificial and irrelevant to the Board's well-established community of interest considerations.

from its Ontario, Oregon facility, including all project sites. For the reasons set forth below, I find that further proceedings are not warranted with respect to this petition.

FACTS

The Employer is engaged in heavy industrial and commercial construction work. It is engaged primarily in the construction of wastewater and water treatment plants, food processing plants, mining facilities, cement plants, and schools. The Employer employs approximately 122 field employees. The record shows that the Employer does not classify its field employees based on craft designations. Instead, all such employees are simply designated as “field employees.” In addition, the record shows that the field employees are cross-trained in various functions and are expected to perform various functions as needed.⁴ The Employer’s president testified that all of its field employees perform sheet metal work approximately 50% to 70% of the time based on the trade jurisdiction definition contained in the Petitioner’s Constitution and Ritual.

Although the Employer does not classify its field employees based on craft designations, the record also shows that certain of its employees possess skills and experience unique to various construction crafts. For example, on smaller projects, such as the construction of a pump house, the Employer typically dispatches a small crew consisting of field employees capable of performing work as an equipment operator, an electrician, a plumber, a pipe fitter, a sheet metal worker, and a laborer. Together, this crew will perform all of the work required for the completion of the project, including excavating dirt, setting concrete forms, pouring concrete, installing the underground piping, erecting the building, installing sheet metal on the outside and

⁴ The exception to this practice concerns electricians and plumbers. Certain electrical and plumbing work must be performed only by a licensed electrician or plumber. However, the record shows that the electricians and plumbers are assisted by other field employees in the performance of these functions. In addition, the record shows that the electricians and plumbers also perform other functions on a project such as excavation, concrete work, sheet metal

roof of the building, setting the equipment such as fans and pumps, and starting up the system. Thus, while certain field employees may possess specific skills and experience, all of the crew performs the various functions necessary for the completion of the project. Significantly, the record shows that all of the field employees typically perform traditional sheet metal work as a part of their regular work assignments. This work is not exclusively performed by one employee or one group of employees.

On a typical large project, the record shows that the excavation would be performed by field employees assigned to an excavation crew. After the excavation work is completed, the excavation crew would remain on the project and work with field employees on a concrete crew. These employees would then remain on the project to work with employees assigned to steel erection. While this process continues through the various phases of the construction, certain of the Employer's field employees will be engaged in the fabrication of sheet metal products for the project such as duct work and piping. This fabrication work is performed in the Employer's sheet metal shop. The record indicates that the Employer's employees rotate between the sheet metal shop and various construction projects. When appropriate in the construction process, the employees who performed the fabrication work will arrive at the job site for the installation of the ductwork and piping, installation of metal siding and roofing, and the setting of HVAC equipment. In performing this installation work, the employees who performed the fabrication work at the sheet metal shop will be assisted by the other employees already on the project and they will, in turn, assist the other employees in the performance of various functions until the project is completed.

work, etc. The record evidence discloses no licensure requirements for sheet metal work performed by employees of the Employer.

The Employer does not compensate employees based on job classifications or specific work performed. The record evidence discloses that an employee's wage is based on his or her experience, versatility, and willingness to train others. All of the Employer's field employees receive the same fringe benefits and all are subject to the Employer's random drug testing policy.

There is no history of collective bargaining between the parties in a smaller unit. I take administrative notice of the fact that on August 13, 1998, an election was conducted by this Office in the matter of Northern Mechanical, Inc., Case 27-RC-7866. As is noted above, Northern Mechanical, Inc., which currently has no employees and performs no work, was a corporation through which the Employer herein performed work in the past. In Case 27-RC-7866, an election was conducted pursuant to a Stipulated Election Agreement in a unit of all journeymen, apprentices, trainees, pre-apprentices, sheet metal workers, service technicians, material handlers, including transporting of materials, but excluding all office clerical employees, all professional employees, guards and supervisors as defined in the Act. The election, which involved only six eligible voters, resulted in a Certification of Results being issued on August 25, 1998.

ANALYSIS

The record evidence shows, and I find, that all of the Employer's field employees are engaged in performing sheet metal work for a significant portion of their time. Thus, sheet metal work is not exclusively assigned to, or performed by, a clearly identifiable or distinct group of employees within the Employer's overall workforce. While the Petitioner elicited testimony from two employees that they had performed only sheet metal work during the time that they had been employed by the Employer, these employees had worked for the Employer for only six months and one month, respectively, at the time of the hearing. More significantly, the fact that

these employees had only performed sheet metal work during their employment does not show that the Employer's other field employees did not also perform sheet metal work. In fact, the undisputed record evidence indicates that they have.

There are also no other factors favoring a finding that there is an identifiable group of sheet metal employees. Specifically, pay and fringe benefits received by employees are unrelated to the sheet metal work performed by employees. Similarly, the Employer's policies apply equally to all field employees. As to bargaining history, no such relevant history exists. Specifically, even though the stipulated unit in Case 27-RC-7866 case was smaller than the one found appropriate herein, the appropriateness of the unit in that case was not determined by the Board, and the stipulation of the parties in that matter is not binding in this proceeding. **Coplay Cement Company**, 288 NLRB 66 (1988); **Midwest Abrasive Co.**, 145 NLRB 1665 (1964). Moreover, no collective bargaining actually took place between the parties in that stipulated unit.

Because the record shows that all of the Employer's field employees share a community of interest and no separate, identifiable smaller group of employees exists, I find that the only appropriate unit is one composed of all of the Employer's field employees.⁵ In that regard, all of the Employer's field employees perform similar tasks on its construction projects, including the performance of sheet metal work. No particular class or group of employees exclusively

⁵ The Board has long held that bargaining units in the construction industry may be appropriate on the basis of either a craft or departmental unit if the unit is a clearly identifiable and homogeneous group with a community of interest separate and apart from other employees. **R.B. Butler, Inc.**, 160 NLRB 1595 (1966); **Del-Mont Construction Co.**, 150 NLRB 85 (1964); and **S.J. Graves & Sons**, 267 NLRB 175 (1987). However, if there is no craft or homogeneous grouping of employees with a community of interest sufficiently distinct from other employees to constitute a separate unit, an overall unit may be the only appropriate unit. **A.C. Pavement Co.**, 296 NLRB 206 (1989); **The Longcrier Company**, 277 NLRB 570 (1985).

performs only one type of job function. Because the field employees regularly perform a variety of different jobs on a project, they all have frequent contact with one another while working. All of the field employees are cross-trained in the performance of various job functions, including the performance of traditional sheet metal work. Moreover, all employees on a project are under the ultimate supervision of the Employer's project manager who is responsible for the entire project.

The petition indicates that there are eight employees in the unit requested by the Petitioner. Because the Petitioner indicated on the record that it was not willing to proceed to an election in a unit larger than that petitioned-for and amended at the hearing, I shall dismiss the petition without prejudice to the Petitioner's right to file another petition in the unit found appropriate herein.⁶

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

⁶ In view of my determination, I find it unnecessary to consider the Employer's objection to the sufficiency of the transcript in this matter.

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **March 14, 2002**.

DATED at Denver, Colorado this 28th day of February, 2002.

B. Allan Benson, Regional Director
National Labor Relations Board
Region 27
600 Seventeenth Street
7th Floor, North Tower
Denver, CO 80202-5433

♦

♦ Classification Codes – 420-1218; 420-2900-2901; 420-2900-2921; 420-2900-2933; 420-2900-2963; 420-4600-4617; 420-5000; 440-1760-9100.